

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DERRICK LEE SMITH, *et al.*,

Plaintiffs,

Case No. 2:18-cv-10736

v.

Honorable Victoria A. Roberts

HEIDI WASHINGTON, *et al.*,

Defendants.

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**ORDER GRANTING PLAINTIFFS' INITIAL MOTION TO AMEND COMPLAINT  
(5) AND DENYING HIS SUBSEQUENT MOTIONS TO AMEND AS MOOT (6  
and 8)**

Derrick Lee Smith, a state inmate, along with George Preston, Kathy Preston, James Preston, Martin Preston, and Rachel Preston ("Plaintiffs"), all of whom are proceeding without the assistance of counsel, filed a civil rights complaint under 42 U.S.C. § 1983. This matter is before the Court for consideration of Plaintiffs' three nearly identical motions to amend complaint. (ECF No. 5, 6 and 8.) For the reasons that follow, the first motion to amend is **GRANTED** and the subsequent motions are **DENIED AS MOOT**.

**I. BACKGROUND**

Plaintiffs filed their initial complaint on March 5, 2018, but failed to provide a filing fee or application to proceed *in forma pauperis*. A deficiency notice was issued on March 8, 2018 and Plaintiffs provided the appropriate application to

proceed *in forma pauperis* on March 27, 2018. The application was granted on April 16, 2018. (ECF No. 7.)

In their first motion to amend, filed on April 12, 2018, Plaintiffs generally seek leave of Court to “have the complaint be amended.” (ECF No. 5 at 1.) There is no further explanation as to what the amendment will entail. Nor is there a proposed amended complaint attached to the motion. The subsequent motions, filed on April 18, 2018 and April 20, 2018, provide no additional information and are nearly identical in substance to April 12, 2018 motion.

## **II. STANDARD**

Under Federal Rule of Civil Procedure 15(a), a party may amend its pleadings in one of two ways. First, a party may amend as a matter of course within 21 days after serving it or within 21 days of service of a responsive pleading. Fed. R. Civ. P. 15(a)(1)(A)-(B). For amendments that fall outside of those time periods, amendment to the pleadings may only be done after obtaining leave of court. The Rule provides that the Court should freely give leave for a party to amend its pleading “when justice so requires.” Fed. R. Civ. P. 15(a)(2).

In addition, the Local Rules of the Eastern District of Michigan require a party moving to amend a pleading to “attach the proposed amended pleading to the motion.” E.D. Mich. LR 15.1. Any amendment to a pleading must “reproduce the entire pleading as amended, and may not incorporate any prior pleading by

reference.” *Id.* Failure to comply with Rule 15.1, however, is “not grounds for denial of the motion.” *Id.*

### **III. ANALYSIS**

Here, Plaintiffs fall within the dictates of Rule 15(a)(1)(A). The complaint has not yet been served upon Defendants. Therefore, they are entitled to amend as of right and the April 12, 2018 motion is **GRANTED**. (ECF No. 5.) However, Plaintiffs have failed to describe what changes are to be made, or to provide a copy of the proposed amended complaint. Accordingly, Plaintiffs are **ORDERED** to file an amended complaint within **THIRTY DAYS OF THE DATE OF THIS ORDER**. The amended complaint must reproduce the entire pleading and may not incorporate the prior pleading by reference. When the Court receives the complaint, it will be subject to screening pursuant to 28 U.S.C. § 1915(e)(2)(B). Plaintiffs’ subsequently filed motions are accordingly **DENIED AS MOOT**. (ECF No. 6 and 8.)

**IT IS SO ORDERED.**

S/Victoria A. Roberts  
VICTORIA A. ROBERTS  
UNITED STATES DISTRICT JUDGE

Dated: April 27, 2018